IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

JUDGMENT
IN
S.B. Criminal Appeal No.1354/2002

Bhupendra Singh S/o Shri Manohar Singh
...accused-appellant
Versus
The Union of India through
Special Public Prosecutor, N.D.P.S. Cases, Jaipur

Date of Judgment :::: 16th of January, 2007

PRESENT
Hon'ble Mr. Justice Narendra Kumar Jain

Shri N.L. Gupta, Amicus Curiae
Shri Vijay Singh Shekhawat, Counsel for accused-appellant
Shri Sushil Sharma, Special P.P., for the Union of India

By the Court:-

Accused-appellant Bhupendra Singh preferred this criminal appeal under Section 374 of the Code of Criminal Procedure, wherein he has challenged the order of his conviction and sentence dated 19.09.2002 passed by the learned Sessions Judge, Tonk in Sessions Case No.61/2001, whereby he was convicted and sentenced under Section 8/18 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter shall be referred to as 'the N.D.P.S. Act') to ten years rigorous imprisonment and a fine of Rs.1,00,000/-

(Rupees one lac); in default of payment of fine, to further undergo two years rigorous imprisonment.

Learned counsel for the accused-appellant, Shri V.S. Shekhawat, at the very out-set, did not challenge the order of conviction passed against the accused-appellant by the learned trial court and submitted that the accused-appellant is in judicial custody since 20.03.2001, the date of his arrest, and he has already suffered the imprisonment of five years and ten months till now, and there is no minimum sentence of imprisonment prescribed as the quantity of contraband recovered in the present case is lesser than the commercial quantity, therefore, the maximum sentence awarded by the learned trial court be reduced to a period of five years and ten months imprisonment, already undergone by the accused-appellant.

On 20th of March, 2001, a raid-party, headed by Inspector Rakesh Kumar, was checking at Deoli-Tonk Road and, during the course of checking, Shri P.C. Meena, a member of the raid-party, stopped the Roadways Bus No.RJ-28 P-0077 coming from Baran to Jaipur. Accused-persons Bhupendra Singh and Laxman Singh, who were traveling in the said Bus were

suspected and, on search, a contraband i.e. opium weighing 1 kg. 900 gram was recovered from the custody of the accused-appellant. The contraband was sent for test and, as per the analysis report dated 10th of April, 2001 given by Government Opium and Alkaloid Works, Neemuch (M.P.), the sample was found by qualitative and quantitative analysis to be opium within the meaning of N.D.P.S. Act, 1985.

After completion of investigation, a challan was filed against accused-appellant Bhupendra Singh as well as co-accused Laxman Singh under Section 8/18 and against co-accused Chunni Lal under Section 8/29 of the N.D.P.S. Act. The trial court framed the charge for the above offences against the above named accused-persons, who denied the charge and claimed to be tried.

After appreciating the evidence on the record, the learned trial court acquitted co-accused Laxman Singh as well as Chunni Lal from the charge framed against them, but convicted and sentenced the accused-appellant, as mentioned above.

I have considered the prosecution evidence and I

find that the recovery of contraband from the accused-appellant is proved from the prosecution evidence, and it is also proved from the analysis-report that the contraband was opium within the meaning of “opium”, as defined in the N.D.P.S. Act, itself. There is overwhelming evidence against the accused-appellant, therefore, in my view, the learned counsel for the accused-appellant is right in not challenging the order of conviction passed by the trial court against the accused-appellant. I do not find any ground to interfere in the finding of conviction of the learned trial court recorded against the appellant.

So far as sentence of imprisonment and fine is concerned, the learned counsel for the appellant has referred the decision in the case of Nehru Puri & Another Vs. Union of India {2006 (1) R.Cr.D. 66 (Raj.)}, wherein a Single Bench of this Court reduced the sentence of imprisonment, awarded to accused in that case, to a period of three-and-half-year, already undergone by him, in a case where there was recovery of opium weighing two kilograms. Although, the opium was recovered in the present matter on 20.3.2001 and, at the relevant time, a minimum sentence of ten years imprisonment was prescribed for such contraband-goods,

but the Parliament passed the Narcotic Drugs and Psychotropic Substances (Amendment) Act No.9 of 2001, which came into force with effect from 2.10.2001, and it was made applicable on all cases wherein trial was pending. The trial in the present case was also pending on the date of amendment in the N.D.P.S. Act. As per the amended provisions, the smaller quantity and commercial quantity were notified vide Notification dated 19.10.2001. The smaller quantity of opium was notified as 25 grams, whereas commercial quantity as 2.5 kilograms. In the present case the contraband recovered was 1 kg. 900 gram, therefore, it was, admittedly, lesser than the commercial quantity, as notified in the aforesaid Notification. As per the amendment made in Section 18 of the N.D.P.S. Act, it was provided that where the contraband involves small quantity then the imprisonment may extend to six months; where the contraband involves commercial quantity then the rigorous imprisonment shall not be less than ten years; and, in any other case the rigorous imprisonment could be up-to ten years with fine which may extend to one lac rupees. The present case falls under clause (c) of Section 18 of the Act, wherein no minimum sentence has been prescribed but the imprisonment may be extended up-to ten years.

The trial court has awarded the maximum sentence of ten years with fine of rupees one lac in the present case. The accused-appellant has already remained in judicial custody for about five years and ten months. Two accused-persons have been acquitted by the trial court itself on the same set of evidence. However, in view of the fact that the order of conviction has not been challenged by the learned counsel for the appellant and his limited prayer is only to reduce the sentence of imprisonment, and, looking to the quantity of contraband recovered in the present matter, I find that the ends of justice will meet in case the rigorous imprisonment of ten years with fine of rupees one lac is reduced to a period of rigorous imprisonment of six years with fine of Rs.25,000/- (Rupees twenty-five thousand); in default of payment of fine, to further undergo three months rigorous imprisonment.

Consequently, the appeal of the appellant is partly allowed. The conviction of the appellant under Section 8/18 of the N.D.P.S. Act is maintained but his sentence of imprisonment and fine is reduced to a period of six years rigorous imprisonment with fine of

Rs.25,000/- (Rupees twenty-five thousand); in default of payment of fine, to further undergo three months rigorous imprisonment.

(Narendra Kumar Jain) J.

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